

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**AKO BURRELL,**

**Plaintiff,**

**v.**

**9:19-CV-1629  
(TJM/ATB)**

**ROBERT MACIOL, et al.,**

**Defendants.**

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**THOMAS J. McAVOY,  
Senior United States District Judge**

**DECISION and ORDER**

**I. INTRODUCTION**

This pro se action brought pursuant to 42 U.S.C. § 1983 was referred to the Hon. Andrew T. Baxter, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). In the relevant portions of the amended civil rights complaint, plaintiff alleges Fourteenth Amendment due process violations, allegedly committed by defendants Correctional Medical Center (“CMC”), Trinity Food Service Group Incorporated (“Trinity”), and Jennifer Sowers relative to plaintiff’s diet at Oneida Correctional Facility (“OCF”) between October of 2016 to October of 2017. (Amended Complaint, Dkt. No. 42). Presently before the Court is the motion to dismiss filed by defendant CMC pursuant to Fed. R. Civ. P. 12(b)(6). (Dkt. No. 81). Judge Baxter recommends that the motion be granted and that plaintiff not be given an opportunity to amend because amendment would not cure the deficiency identified by Judge Baxter.

(See *generally*, Report-Recommendation, Dkt. No. 119). Plaintiff has filed no objections to the Report-Recommendation, and his time to do so has passed.

## **II. DISCUSSION**

After examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice.

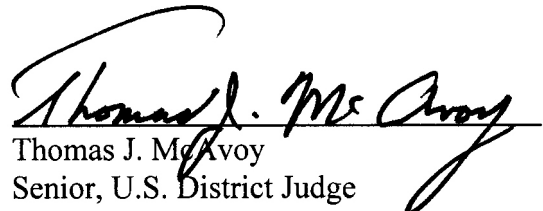
## **III. CONCLUSION**

Accordingly, the Court **ACCEPTS** and **ADOPTS** the Report-Recommendation (Dkt. No. 119) for the reasons stated therein. It is therefore

**ORDERED** that defendant CMC's motion to dismiss (Dkt. No. 81) is **GRANTED**, and the complaint is **DISMISSED IN ITS ENTIRETY** as against defendant CMC, without the opportunity to amend.

**IT IS SO ORDERED.**

Dated: January 25, 2022  
Binghamton, New York

  
Thomas J. McAvoy  
Senior, U.S. District Judge